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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951

No. 286

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner*,

v.

WALTO C. MAYPEARL, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

No. 287

STATE OF MISSOURI, EX REL. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, *Petitioner*,

v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

## PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI, AND BRIEF IN SUPPORT OF PETITION.

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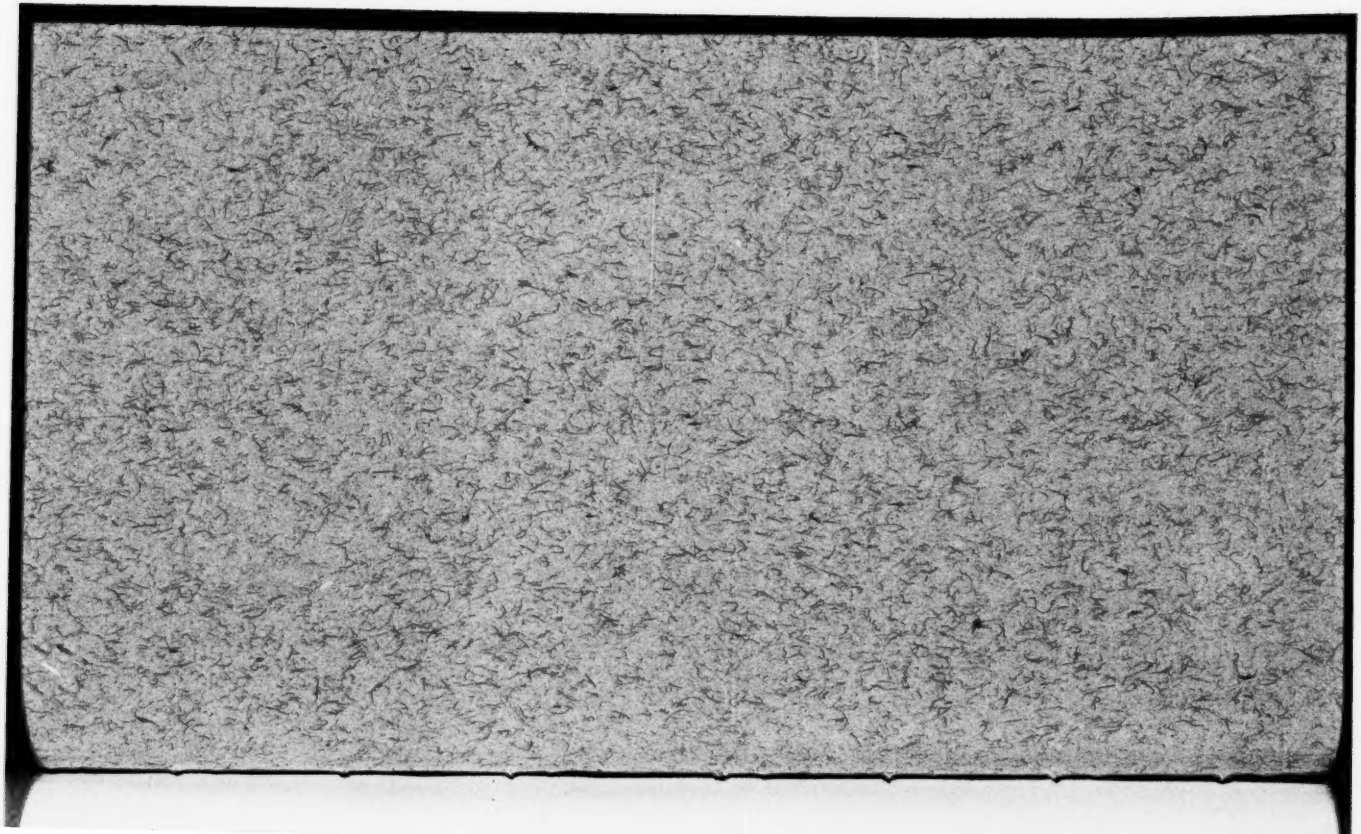

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STATE OF MISSOURI, EX REL. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, *Petitioner,*

v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

---

## PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

---

The decision of this Court in *Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1, rendered November 6, 1950, remanding these causes to the Supreme Court of Missouri for decision of questions

of local law of Missouri controlling the enforcement of Federal Employers' Liability Act in Missouri courts, having failed in its purpose and gone for naught in so far as Missouri is concerned, these petitioners, Southern Railway Company, a corporation, and the Atchison, Topeka and Santa Fe Railway Company, a corporation, respectfully pray that writs of certiorari issue to the Supreme Court of Missouri to review the final judgment entered at its April Session, 1951, in its cases No. 41461 and No. 41558, respectively, quashing its alternative writs of mandamus issued on April 12, 1949, and June 16, 1949, respectively, and refusing to order the Circuit Court of the City of St. Louis, Missouri, to entertain and determine the motions to dismiss the F.E.L.A. suits under the principle of *forum non conveniens.*

Inasmuch as the above-entitled cases were formerly consolidated for the purpose of trial in this Court and in the Supreme Court of Missouri, the petitioners are filing this petition as a joint petition.

## SUMMARY STATEMENT OF THE CASES.

On October 13, 1948, Lelia M. Blevins, who had been appointed administratrix of the estate of Roderick E. Blevins by a Tennessee Court, filed an action under F.E.L.A. in the Circuit Court of the City of St. Louis, Missouri, against Southern Railway Company, relator below, for $100,000.00 on account of the death of said Roderick E. Blevins while in the employ of the said relator, in Tennessee (R. pp. 19-24). Both the administratrix and the deceased were residents of Tennessee. On November 13, 1948, said relator moved to dismiss on the ground of inappropriate forum within the doctrine of *forum non conveniens,* and on March 14, 1949, the presiding judge denied the motion on the sole ground that he had no jurisdiction to entertain it (R. pp. 24-30). On March 31, 1949, relator below filed its petition for writ of mandamus in the Missouri Supreme Court and that Court, on April 12, 1949, issued its alterna-

tive writ (R. pp. 1-18, 30-31) and in due time respondent below made his return (R. pp. 31-35). Thereafter, the Missouri Supreme Court quashed its alternative writ of mandamus and entered judgment against petitioner upon the theory that Section 6 of F.E.L.A., as construed by this Court in *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U.S. 44, and *Miles* v. *Illinois Central R. Co.,* 315 U.S. 698, compelled the Circuit Court of the City of St. Louis to retain jurisdiction of the F.E.L.A. action and determine it, and denied to that court the right to consider any element of convenience and to apply the principles and doctrine of *forum non conveniens* in dismissing the action (R. pp. 67-75).

On February 15, 1949, Floyd P. Seachris, a resident of Oklahoma, filed an action under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, against the Atchison, Topeka and Santa Fe Railway Company, relator below, seeking damages in the amount of $100,000.00 for alleged personal injuries sustained in the employ of said relator, at Waynoka, Oklahoma. (R. pp. 49-52) Thereafter said relator moved to dismiss on the grounds of inappropriate forum within the doctrine of *forum non conveniens,* and on May 4, 1949, the presiding judge denied the motion on the sole ground that he had no jurisdiction to entertain it. (R. p. 58) Thereafter relator below filed its petition for writ of mandamus in the Missouri Supreme Court and that court on June 16, 1949, issued its alternative writ and in due time respondent below made his return. (R. pp. 60-64) Thereafter the Missouri Supreme Court quashed its alternative writ of mandamus and entered judgment against petitioner upon the theory that Section 6 of the Federal Employers' Liability Act, as construed by this Court in *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U.S. 44, and *Miles* v. *Illinois Central R. Co.,* 315 U.S. 698, compelled the Circuit Court of the City of St. Louis to retain jurisdiction of the F.E.L.A. action and determine it, and denied to that court the right

to consider any element of convenience and to apply the principles and doctrine of *forum non conveniens* in dismissing the action. (R. pp. 67-75)

This Court granted certiorari upon petitions of these petitioners filed at the October Term, 1949, 339 U.S. 918, to review the first decision by the Supreme Court of Missouri dated October 10, 1949, quashing the alternative writs theretofore issued by the Missouri court. (R. p. 81) Upon review of the decision of the Missouri court, this Court, on November 6, 1950, at the October Term, 1950, reversed the Supreme Court of Missouri, vacated the judgment of that court, and remanded the causes to the Supreme Court of Missouri for further proceedings not inconsistent with the opinion of this Court, particularly requiring that the Missouri court decide the question of the availability of the principle of *forum non conveniens* in F.E.L.A. cases, according to the local law of Missouri. (R. pp. 82-83) *Missouri ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1. The Supreme Court of Missouri (*en banc*), in response to the mandate of this Court, reconsidered the causes at its April Session, 1951, and on May 14, 1951, rendered its decision again quashing its alternative writs of mandamus and refusing to order the Circuit Court of the City of St. Louis, Missouri, to entertain and determine motions to dismiss the actions brought under the F.E.L.A. under the principle of *forum non conveniens.* — Mo. —, 240 S.W. 2d 106. (R. pp. 83-89) This was a final judgment. These petitioners seasonably filed in the Supreme Court of Missouri motions to rehear these causes and on June 11, 1951, the Supreme Court of Missouri denied the petitioners' motions to rehear the causes. (R. pp. 89-90)

## THE OPINION BELOW.

The opinion of the Supreme Court of Missouri appears at page 83 of the Transcript of Record. The opinion has not yet been published in the official reports of the Supreme Court of Missouri, but it is reported in 240 S.W. 2d 106.

The Supreme Court of Missouri failed to carry out the mandate of this Court to decide the cases under the local law of Missouri and dismissed the writs of mandamus by misapplication of Federal Law.

## JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257 of the Judicial Code, Title 28, U. S. Code, providing for review by this Court by certiorari of final decisions of the highest courts of the several states wherein a right or privilege is specifically set up or claimed under the Constitution or Statutes of the United States.

Specifically, the petitioners say:

(1) The Supreme Court of Missouri failed to carry out the mandate of this Court which required the Missouri court, in the disposition of cases arising under the F.E.L.A., to decide the cases according to local law of Missouri upon the question whether the doctrine of *forum non conveniens* is available to trial courts of Missouri in the disposition of F.E.L.A. cases.

*Blake* v. *McClung,* 176 U.S. 59;
*Lavender* v. *Kurn,* 329 U.S. 762;
*Lavender* v. *Clark,* 329 U.S. 674;
*Fisher* v. *Hurst,* 333 U.S. 147;
*Sipuel* v. *University of Oklahoma,* 332 U.S. 631;
*Cole* v. *Arkansas,* 338 U.S. 345;
*Ex Parte Texas,* 315 U.S. 8.

(2) The Missouri Supreme Court dismissed the writs of mandamus in these cases by the misapplication of Article IV, Section 2, of the Constitution of the United States in holding, contrary to the decisions of this Court, and of other state courts, that in the circumstances of these cases, the application of the doctrine of *forum non conveniens* by the Circuit Court of the City of St. Louis would violate Article IV, Section 2, of the Constitution, thus repeating one of the same errors that brought these causes to this Court

for review at the October Term, 1949, which error this Court undertook to have corrected by its decision and mandate in these cases.

*Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1;
*State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge,* — Mo. —, 240 S.W. 2d 106;
*State, ex rel Southern Ry. Co.* v. *Mayfield, Judge,* 359 Mo. 827; 224 S.W. 2d 105;
*Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501;
*Douglas* v. *N. Y., N. H. & H. R. Co.,* 279 U.S. 377;
*McKnett* v. *St. Louis & S. F. Ry. Co.,* 292 U.S. 230;
*Chambers* v. *Baltimore & Ohio R. Co.,* 207 U.S. 142.

## THE QUESTIONS PRESENTED.

1. Did the Missouri court decide that Missouri has a state policy against the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits?

2. Did the Supreme Court of Missouri fail to carry out the mandate of this Court to decide these cases according to the law and policy of Missouri and not inconsistent with the decision of this Court?

3. Did the Supreme Court of Missouri apply Article IV, Section 2, of the Constitution of the United States to quash the writs of mandamus in these cases, contrary to Federal law, the decisions of this Court in these cases, and in other cases?

4. Will this Court review upon writs of certiorari the final decision of the highest court of a state purporting to have been made pursuant to its mandate, in order to determine whether the mandate has been carried out?

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

1. The Supreme Court of Missouri, after having failed to find any law or policy in Missouri rejecting the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, inadvertently and improvidently failed to carry out the mandate of this Court in that it failed to decide the question whether Missouri Courts, in the absence of any State law or policy rejecting the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, possessed the inherent power to invoke the doctrine of *forum non conveniens* in such cases.

*Blake* v. *McClung*, 176 U.S. 59;
*Lavender* v. *Kurn*, 329 U.S. 762;
*Lavender* v. *Clark*, 329 U.S. 674;
*Fisher* v. *Hurst*, 333 U.S. 147;
*Sipuel* v. *University of Oklahoma*, 332 U.S. 631;
*Cole* v. *Arkansas*, 338 U.S. 345;
*Ex Parte Texas*, 315 U.S. 8.

2. Notwithstanding the decision of this Court in the *Mayfield* case,[1] in which this Court defined the circumstances under which the highest court of a state could determine the question of the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, the Supreme Court of Missouri, in its second decision in the *Mayfield* case,[2] failed to alter the substance of its first decision in the *Mayfield* case[3] in which it held that the Privileges and Immunities Clause of the Federal Constitution would prevent the application of the doctrine of *forum non conveniens*, and thus repeated and emphasized one of the same errors

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[1] *State of Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge*, 340 U. S. 1.

[2] *State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge*, — Mo. —, 240 S.W. 2d 106.

[3] *State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge*, 359 Mo. 827, 224 S.W. 2d 105.

which brought these cases to this Court for review by certiorari at the October Term, 1949.

*State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge,* — Mo. —, 240 S.W. 2d 106;
*State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge,* 359 Mo. 827, 224 S.W. 2d 105.

The Supreme Court of Missouri failed to profit by and conform to the decision of this Court in the *Mayfield* case, with the result that these cases have been decided in a way not in accord with the principles enounced by this Court in the *Mayfield* case, in other decisions by this Court, and in decisions of other states.

*State of Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1.

3. In the absence of any showing by the court below of a state policy against the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, the Missouri court erroneously applied principles of Federal constitutional limitations on the right of states to decline to accept jurisdiction in F.E.L.A. cases when, in fact, Missouri has already accepted jurisdiction of the parties and subject matter in these cases, with the result that the decision of the Missouri court, quashing the writs of mandamus, turned upon irrelevant Federal constitutional principles governing the availability of state courts, and not upon the existence of Missouri policy with respect to availability of the doctrine of *forum non conveniens.*

*State of Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1;
*State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge,* — Mo. —, 240 S.W. 2d 106.

4. The issues involved in these cases are of great public importance. The administrative difficulties for courts aris-

ing when litigation is piled up and congested in chosen centers instead of being handled at its origin, the unjust tax burden and burden of jury duty imposed upon the residents of the jurisdiction into which foreign cases are imported, and the denial to such citizens of access to their over-crowded courts are all factors of public interest which are present in this litigation. The factors of private interest here involved are obvious and are great.

*Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501;
*Douglas* v. *N. Y., N. H. & H. R. Co.,* 279 U.S. 377;
*Universal Adjustment Corp.* v. *Midland Bank,* 281 Mass. 303, 184 N.E. 152;
*Whitney* v. *Madden,* 400 Ill. 185, 79 N.E. 2d 593;
*Collard* v. *Beach,* 81 App. Div. 582, 81 N. Y. Supp. 619.

5. The Congress enacted Section 1404(a), Title 28, U.S.C., to give Federal district courts the power to apply the essential principles of the doctrine of *forum non conveniens* in F.E.L.A. cases and in other cases of Federal jurisdiction by transferring such causes to more appropriate and convenient districts or divisions for trial, and since the states possess the exclusive power, subject to well-defined Federal constitutional limitations, to make policy in the matter of the availability of the doctrine of *forum non conveniens* to state trial courts in F.E.L.A. cases, there should be no question whether there is a policy in Missouri which would operate to defeat Federal policy in the administration of this important Federal Act; and since it is obvious that the Missouri court still feels under compulsion to deny the availability of the doctrine in F.E.L.A. cases because of the Privileges and Immunities Clause, it is respectfully submitted that this Court, by a new mandate, should repeat its advice to the Supreme Court of Missouri that it is free of any compulsion of the Federal Constitution to deny the availability of the doctrine of *forum non conveniens* in this category of cases. See Memorandum Ruling of Superior Court of California for the County of Los

Angeles, in the consolidated cases of *Frieda Jergins* v. *The Atchison, Topeka and Santa Fe Railway Company,* No. 560557, and *John M. Martin* v. *The Atchison, Topeka and Santa Fe Railway Company,* No. 569609, handed down on April 28, 1950, Appendix, pages 51-56. This case discusses particularly the effect of any failure of states to make the doctrine of *forum non conveniens* available as defeating the purpose of Congress in the enactment of Section 1404(a) for the better administration of the Federal Employers' Liability Act.

6. This Court brought these cases here for review at the October Term, 1949, because the proceedings involved "questions important to the enforcement of Federal Employers' Liability Act by courts of the States." If it was important then for the law to be declared with respect to the power of state courts to invoke the doctrine of *forum non conveniens* in this class of litigation, it is respectfully submitted that the importance of the solution of these questions has been greatly accentuated by the heaping accumulation of litigation of this kind now cluttering the dockets of state courts, brought since the decision of *Ex Parte Collett,*[4] holding that under Section 1404(a) Federal district courts possessed the power to transfer F.E.L.A. cases to other districts or divisions in proper cases. See order in case of *William J. Kelly, plaintiff* v. *Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, a corporation, defendant,* Civil Action at Law No. 13578, in the Circuit Court of St. Clair County, Illinois, Appendix, pages 46-50.

7. It is respectfully submitted that the situation presented by the record in these cases, particularly the fact that the second decision by the Supreme Court of Missouri was obviously rendered without appreciative consideration of the principles enounced by this Court in the *Mayfield*

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[4] *Ex Parte Collett,* 337 U.S. 55.

case, defining the relationship between the doctrine of *forum non conveniens* and the Privileges and Immunities Clause of the Federal Constitution, should move this Court to grant certiorari to review the decision of the Supreme Court of Missouri.

Rule 38 of Supreme Court Rules, par. 5(a);
*Ex Parte Collett*, 337 U.S. 55;
*Baltimore & Ohio R. Co.* v. *Kepner*, 314 U.S. 44.

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## BRIEF IN SUPPORT OF PETITION.

---

### THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at page 83 of the transcript of record. The opinion has not yet been published in official reports of the Missouri Supreme Court but it is reported in 240 S.W. 2d 106.

## JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code. The specific grounds for invoking jurisdiction are set out on pp. 5-6 of the annexed petition.

## SUMMARY STATEMENT OF THE CASES.

A summary statement of the cases is set out on pages 2-4 of the petition annexed hereto.

## THE QUESTIONS PRESENTED.

The specific questions presented are stated on page 6 of the petition, but, for convenience, will here be repeated, following a short preliminary statement of the ultimate issue in these cases.

The ultimate issue in these cases is whether the alternative writs of mandamus issued by the Supreme Court of Missouri should be applied to require the Circuit Court of the City of St. Louis to entertain and determine a motion to dismiss a Federal Employers' Liability action under the principle of *forum non conveniens. Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1. Upon that ultimate issue there arise out of the decision of the Supreme Court of Missouri, which these petitioners are now petitioning this Court to review by certiorari, four questions, as follows:

1. Did the Missouri court decide that Missouri has a state policy against the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits?

2. Did the Supreme Court of Missouri fail to carry out the mandate of this Court to decide these cases according to the law and policy of Missouri and not inconsistent with the decision of this Court?

3. Did the Supreme Court of Missouri apply Article IV, Section 2, of the Constitution of the United States to quash the writs of mandamus in these cases, contrary to Federal law, the decisions of this Court in these cases, and in other cases?

4. Will this Court review upon writs of certiorari the final decision of the highest court of a state purporting to have been made pursuant to its mandate, in order to determine whether the mandate has been carried out?

## SUMMARY OF ARGUMENT.

I. The Supreme Court of Missouri, in its decision and opinion purporting to carry out the mandate of this Court, does not reveal that Missouri has any law or policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits.

II. In the absence of the finding by the Supreme Court of Missouri of any Missouri law or policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits, the Missouri court failed to carry out the mandate of this Court in that it did not decide the question whether trial courts of Missouri, in the absence of any such law or policy, possess the inherent power to invoke the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits.

*State of Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1;
*State, ex rel. Southern Railway Company* v. *Mayfield, Judge,* — Mo. —, 240 S.W. 2d 106.

III. The Missouri court erroneously applied principles of Federal constitutional limitations on the rights of states to decline to accept jurisdiction in F.E.L.A. cases when, in fact, Missouri has already accepted jurisdiction of the parties and subject matter in these cases, with the result that the decision of the Missouri court, quashing the writs of

mandamus, turned upon irrelevant Federal constitutional principles governing the availability of state courts, and not upon the existence of Missouri policy with respect to availability of the doctrine of *forum non conveniens*.

*State ex rel. Southern R. Co.* v. *Mayfield, Judge*, — Mo. —, 240 S.W. 2d 106;
*State of Missouri, ex rel. Southern Railway Company* v. *Mayfield, Circuit Court Judge*, 340 U.S. 1;
*Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501;
*McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U.S. 230;
*Chambers* v. *Baltimore & Ohio R. Co.*, 207 U.S. 142;
*Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U.S. 377;
*Mooney* v. *D. & R. G. W. R. Co.*, — Utah —, 221 P. 2d 628.

IV. This Court will review upon a writ of certiorari the final decision of the highest court of a state purporting to have been made pursuant to its mandate in order to determine whether the mandate has been carried out.

*Blake* v. *McClung*, 176 U.S. 59;
*Lavender* v. *Kurn*, 329 U.S. 762;
*Lavender* v. *Clark*, 329 U.S. 674;
*Fisher* v. *Hurst*, 333 U.S. 147;
*Sipuel* v. *University of Oklahoma*, 332 U.S. 631;
*Cole* v. *Arkansas*, 338 U.S. 345;
*Ex Parte Texas*, 315 U.S. 8.

## ARGUMENT.

### I.

### The Supreme Court of Missouri, in its Decision and Opinion Purporting to Carry Out the Mandate of This Court, Does not Reveal that Missouri Has Any Law or Policy Rejecting the Availability of the Doctrine of Forum Non Conveniens in Federal Employers' Liability Act Suits.

#### (a) Proceedings leading up to mandate of this Court.

When these cases[5] were before this Court at the October Term, 1950, this Court gave consideration to two decisive pronouncements of the Missouri court, in its first opinion, which we quote, as follows:

*First Pronouncement*:

> "Thus, it is clear that under the Kepner and Miles cases, supra, a state court cannot dismiss a Federal Employers' Liability case solely under the *forum non conveniens* doctrine." (page 109, 224 S.W. 2d)

*Second Pronouncement*:

> "Since Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts, (see the many such cases listed in the Missouri Digest, Master and Servant, key 85), it follows that not to allow citizens of other states the right to file Federal Employers' Liability suits in our state courts would violate Article 4, Section 2, of the Constitution of the United States." (page 110, 224 S.W. 2d)

For the purposes of this preliminary statement, it is sufficient to say that this Court, in its consideration of the above-quoted pronouncements by the Missouri court, held (1) that the Federal Employers' Liability Act imposed no

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[5] *Missouri, ex rel. Southern Railway Company,* v. *Mayfield, Circuit Court Judge,* 340 U.S. 1.

restrictions upon the states in making the doctrine of *forum non conveniens* available in FELA cases merely because the Federal Employers' Liability Act empowers their courts to entertain suits arising under it, and (2) that states are free to accept or reject the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases, as they choose, subject to certain Federal constitutional limitations upon the states which this Court outlined in its opinion with particularity. This Court, in stating its directions to the court below, upon which its formal mandate issued, concluded its opinion on page 5, 340 U.S., as follows:

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. *It should be freed to decide the availability of the principle of forum non conveniens in these suits according to its own local law.* To that end we vacate the judgment of the Supreme Court of Missouri and remand the cause to that Court for further proceedings not inconsistent with this opinion. *State Tax Comm'n* v. *Van Cott*, 306 U.S. 511; *Minnesota* v. *National Tea Co.*, 309 U.S. 551; *Herb* v. *Pitcairn*, 324 U.S. 117, 325 U.S. 77." (Emphasis supplied)

The petitioners in these causes do not question the decision of the Missouri court with respect to whether the Federal Employers' Liability Act denies the availability of the doctrine of *forum non conveniens* to state courts in transitory F.E.L.A. actions, because the Missouri court has disposed of these cases by fully recognizing that ruling as laid down by this Court. But, the petitioners raise the question whether the Missouri court, in response to the mandate of this Court, has decided these cases according to the local law of Missouri, and non inconsistent with this Court's decision and opinion with respect to Federal constitutional limitations upon state courts as to the availability of the doctrine of *forum non conveniens* in F.E.L.A. actions.

We shall here present the view that the Missouri court has not carried out the mandate of this Court by deciding these cases according to local law, and that the Missouri court has quashed the writs of mandamus by misapplication of Federal law, contrary to the decisions of this Court.

When these cases were here before, counsel for respondents, in their brief and oral argument before this Court, strongly contended that Missouri had a policy derived from its constitution and statutes against the availability of the doctrine of *forum non conveniens* and that the Missouri court, in its first decision, had quashed the writs of mandamus on the ground of state law, but this Court had sufficient doubt as to the validity of such contention to review the decision of the Missouri court, with the result that this Court vacated the judgment of the Missouri court and remanded the causes for decision by the Missouri court on grounds of state law, subject to such Federal constitutional restrictions, outlined by this Court, as would limit the power of a state to accept or reject the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases.

**(b) Federal restraints upon state policy to reject availability of doctrine of forum non conveniens in Federal Employers' Liability Act cases.**

For the guidance of state courts in determining the question of the availability of the doctrine of *forum non conveniens* in Employers' Liability Act cases, this Court, in its opinion, set forth three theories under which states may determine the availability of the doctrine in such actions, without Federal interference, in the following language which we quote from the opinion, pp. 3-4, 340 U.S.:

> "A decision by the highest court of a State determining that the doctrine of *forum non conveniens* cannot bar an action based on the Federal Employers' Liability Act, *in the circumstances before us,* may rest on one of three theories. (Emphasis supplied) (1) According to its own notions of procedural policy, a State may reject, as it may accept, the doctrine for all

causes of action begun in its courts. If denial of a motion to dismiss an action under the Federal Employers' Liability Act is rested on such a general local practice, no Federal issue comes into play. (It is assumed of course that the State has acquired jurisdiction over the defendant.) (2) By reason of the Privileges and Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art. IV, §2. Therefore Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers' Liability Act arising out of conduct outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State. But if a State chooses to '[prefer] residents in access to often overcrowded courts' and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act. *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U.S. 377, 387. Whether a State makes such a choice is, like its acceptance or rejection of the doctrine of *forum non conveniens*, a question of State law not open to review here.

"But, (3), a State may reject the doctrine of *forum non conveniens* in suits under the Federal Employers' Liability Act because it may deem itself compelled by Federal law to reject it. Giving the opinion of the Supreme Court of Missouri in these cases a scope most favorable to reliance on a non-federal ground, doubt still remains whether that Court did not deem itself bound to deny the motions for dismissal on the score of *forum non conveniens* by its view of the demands of our decisions in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U.S. 44, and *Miles* v. *Illinois Central R. Co.*, 315 U.S. 698."

With respect to Federal limitations upon the power of States to reject the doctrine of *forum non conveniens* in F.E.L.A. cases, it would not be an oversimplification to say this Court held (after assuming that a state has complied with Article IV, Section 2, of the Constitution in *making its courts accessible* in F.E.L.A. cases to its citizens or noncitizens alike) that a state possesses the exclusive

power to promulgate a state policy to make the doctrine of *forum non conveniens* available or not available in F.E.L.A. cases, as it chooses, provided that such policy does not offend Article IV, Section 2, of the Constitution of the United States, by *making the doctrine available* to citizens of other states but unavailable to its own citizens, or vice versa. In other words, a state policy may provide for the availability of the doctrine, if it chooses to do so, or it may deny the availability of the doctrine, but in either case the doctrine must be available or not available in all F.E.L.A. cases and to all citizens alike. However, once a state has promulgated its policy making the doctrine so available or unavailable, whichever it may be, "no Federal issue comes into play."

Now, with the principles enounced by this Court in mind, for convenient reference in our discussion of the decision of the Missouri court, in support of the proposition that Missouri has not answered the question whether the doctrine of *forum non conveniens* is available under Missouri law, we shall quote pivotal and decisive excerpts from its second opinion and quote in a footnote in this brief the applicable provisions of the Missouri Constitution,[6] and the pertinent statutes[7] of Missouri. The pivotal and decisive

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[6] Section 14 of Article 1 of the Missouri Constitution states: "That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

[7] These statutes were originally enacted in 1891 where they are found under laws 1891, page 68, being originally numbered 547 and 548. In 1905 the latter statute, then Section 548 (R. S. Mo. 1899) was amended (Laws 1905, page 95). These statutes are now Sections 856 and 857 (R. S. Mo. 1939) (847.14 Mo. R.S.A.) and 507.20 (R. S. Mo. 1949).

The original form of these statutes, taken from R. S. Mo. 1899, Sections 547 and 548, were as follows:

> "SEC. 547. Parties to suit when cause of action accrues in another state.—Whenever a cause of action has accrued under or by virtue of the laws of any other state or territory,

excerpts from the opinion of the Missouri court, the second and third of which quotations were quoted by that court from its first opinion, are as follows:

> "The United States Supreme Court opinion further stated: 'Therefore, Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers' Liability Act arising out of conduct

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such cause of action may be brought in any of the courts of this state, by the person or persons entitled to the proceeds of such cause of action: *Provided,* such person or persons shall be authorized to bring such action by the laws of the state or territory where the cause of action accrued (Laws 1891, p. 68-1)."

"SEC. 548. Parties not authorized to sue, court may appoint.—Whenever any cause of action has accrued under or by virtue of the laws of any other state or territory, and the person or persons entitled to the benefit of such cause of action are not authorized by the laws of such state or territory to prosecute such action in his, her or their own names, then, in every such case, such cause of action may be brought in any of the courts of this state, by a person to be appointed for that purpose by the court in which such cause of action is sought to be instituted, or the clerk thereof in vacation, and such person so appointed may institute such action and prosecute the same for the benefit of the person or persons entitled to the proceeds thereof under the laws of the state or territory wherein the cause of action arose (Laws 1891, p. 68)."

As noted, Section 548 was amended in 1905. This section, as amended, reads as follows:

> "SECTION 548. Whenever any cause of action has accrued under or by virtue of the laws of any other state or territory, and the person or persons entitled to the benefit of such cause of action are not authorized by the laws of such state or territory to prosecute such action in his, her or their own names, then, in every such case, such cause of action may be brought and prosecuted in any court of this state by the person or persons authorized under the laws of such state or territory to sue in such cases. Such suits may be brought and maintained by the executor, administrator, guardian, guardian *ad litem,* or any other person, empowered by the laws of such state or territory to sue in a representative capacity."

outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State.' " (page 108, 240 S.W. 2d)

" 'Also, Missouri permits citizens of this State to file Federal Employers' Liability cases in its courts. To deny the same privilege to citizens of another state would violate Article 4, Section 2, of the Constitution of the United States. * * *' " (page 110, 224 S.W. 2d)

" 'Since Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts, (see the many such cases listed in the Missouri Digest, Master and Servant, Key Number 85) it follows that not to allow citizens of other states the right to file Federal Employers' Liability suits in our state courts would violate Article 4, Section 2, of the Constitution of the United States.' " (page 110, 224 S.W. 2d)

"Since the policy of this state has been, and is, to allow citizens of Missouri (resident and non-resident) to bring and maintain suits under the Federal Employers' Liability Act in the courts of this state, we cannot bar citizens of other states from doing likewise. * * *" (page 109, 240 S.W. 2d)

Clearly, reference to the foregoing quoted excerpts from the Missouri court's opinion reveals that the sum and substance of the ground upon which the Missouri court dismissed the writs of mandamus in these cases is, that since it is the policy of Missouri to allow its citizens to bring and maintain Federal Employers' Liability actions in its courts, Missouri cannot bar citizens of other states from doing likewise, because to do so would violate Article IV, Section 2, of the Constitution of the United States—a sound principle which refers to the availability of courts for F.E.L.A. actions, as this Court decided in the *Chambers*[8] case and as the Missouri court decided in the *Grimm*[9] case, with which we are not concerned, but a principle which

[8] *Chambers* v. *B. & O. Co.*, 207 U.S. 142.

[9] *State, ex rel. Mutual Pacific Life Ins. Co.* v. *Grimm*, 239 Mo. 135, 143 S.W. 483.

does not refer to the availability of the doctrine of *forum non conveniens* in F.E.L.A. actions, with which we are concerned.

We quickly point out, with emphasis, that when the Missouri court stated in these cases, that since Missouri has a policy to allow its citizens to bring and maintain transitory F.E.L.A. actions in its courts, it follows that Missouri could not discriminatorily deny access to its courts to citizens of other states, because to do so would violate the Privileges and Immunities Clause, a proposition with which we fully agree, *such statement was not to enounce that Missouri has a policy rejecting the doctrine of forum non conveniens in all transitory F.E.L.A. cases, brought in its courts by citizens of Missouri, which could form a basis for discrimination against citizens of other states who bring like actions in Missouri courts, if Missouri invoked the doctrine against such citizens of other states.*

The Missouri court was writing about the right of noncitizens of access to Missouri courts in which to file and maintain F.E.L.A. actions, as guaranteed by the Federal Constitution, and not the right of Missouri courts to relinquish jurisdiction under the principle of *forum non conveniens* after the Federal constitutional right of such noncitizens to bring and maintain F.E.L.A. actions in Missouri courts had been exercised.

If the Missouri court appreciated the important distinction between the availability of state courts to all citizens alike in which to bring and maintain F.E.L.A. actions, as guaranteed by the Federal Constitution, on the one hand, and the sovereign power of the states, subject to certain Federal constitutional limitations, to make available the doctrine of *forum non conveniens,* to empower their courts to relinquish jurisdiction of such actions, on the other hand, the Missouri court certainly did not recognize such distinction, with the result that the decision by the court below did not touch the issue in these cases.

**(c) The issue in these cases involves the availability of the doctrine of forum non conveniens for F.E.L.A. suits and not the availability of Missouri courts in which to bring and maintain such suits.**

The ultimate objective of the decision and opinion of this Court, in the aspect of these cases now considered, was to define limitations imposed by Article IV, Section 2, of the Constitution upon any Missouri policy to make the doctrine of *forum non conveniens* unavailable for F.E.L.A. cases. In the approach to that objective, this Court assumed that the Circuit Court of the City of St. Louis had jurisdiction of the defendants, thus freeing the Missouri court of the necessity of giving any consideration to any limitations imposed by Article IV, Section 2, upon any state policy to make its courts available or unavailable to noncitizen plaintiffs in F.E.L.A. suits, and then this Court proceeded to consider discriminatory practices which, if engaged in by a state, after its courts have acquired jurisdiction of defendants, would violate Article IV, Section 2, of the Constitution. Yet, the Missouri court, in apparent lack of appreciation of the difference between constitutional limitations upon the availability of courts, and the constitutional limitation upon the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, confined its decision to the academic and totally irrelevant question whether to deny citizens of states other than Missouri the right to bring and maintain F.E.L.A. actions in the courts of Missouri would violate Article IV, Section 2, of the Constitution, when Missouri allowed its citizens to bring and maintain like actions in the courts of Missouri—a question which could not have possibly been an issue since the noncitizen plaintiffs in these cases had already been allowed the availability of Missouri courts pursuant to Missouri policy derived from the Missouri Constitution and statutes, consonant with Article IV, Section 2, of the Consti-

tution, as this Court pointed out in its statement of the theories heretofore quoted.[10]

This Court, in stating the theories upon which the highest court of a state could determine whether the doctrine of *forum non conveniens* could bar F.E.L.A. suits, said it was defining these theories *"in the circumstances before us."*

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[10] While this Court's statement of theory (2) on page 3, 340 U.S. of its opinion, as a theory under which the highest court of the state may determine that the doctrine of *forum non conveniens* cannot bar a F.E.L.A. suit, *standing alone,* may be susceptible of the construction that this Court was referring to the availability of Missouri courts for F.E.L.A. cases to noncitizen plaintiffs, which was the question to which the Missouri court confined its consideration, when we consider the statement of theory (2) in its context (which assumes that Missouri has already made its courts available to the noncitizen plaintiffs in these cases in satisfaction of the requirements of Article IV, Section 2), we must assume that this Court was referring to the possibility of the existence of a policy of Missouri which would make the doctrine of *forum non conveniens* inapplicable to nonresident Missourians in F.E.L.A. suits brought in Missouri courts, as a basis for the violation of Article IV, Section 2, of the Constitution, if Missouri should discriminatorily make the doctrine applicable to nonresident citizens of other states in like cases.

While any construction we may place on this Court's theory (2) would be immaterial to the Missouri court's errors, and to the consequent necessity for this Court to again accept jurisdiction of these causes, candor requires us to respectfully submit that if we have misconstrued the statement of theory (2), and if it has the meaning which the Missouri court has apparently ascribed to the statement by quoting a sentence from it on page 108, 240 S.W. 2d, such theory would not only be totally irrelevant to the issues in this case, but any such proposition as a statement of a theory under which the highest court of a state could determine that the doctrine of *forum non conveniens* cannot bar an action based on the F.E.L.A., is unsound, because the doctrine of *forum non conveniens,* by its very nature and character, could never be employed to test the right of any citizen to demand access to the courts of a state to bring and maintain an action as guaranteed him by Article IV, Section 2, of the Constitution. The doctrine assumes that the court has jurisdiction of the parties and subject matter. *Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501.

Some of the circumstances were the facts that the Circuit Court of the City of St. Louis had jurisdiction of these defendants, and that the plaintiffs were actually engaged in the prosecution of their actions when the defendants filed motions to dismiss them under the principle of *forum non conveniens*. Moreover, the Court stated parenthetically in the course of the statement of these theories that "(It is assumed of course that the State has acquired jurisdiction of the defendants)."

When this Court recognized the fact that these non-citizen plaintiffs in these cases had been permitted to bring and maintain their F.E.L.A. suits in the Circuit Court of the City of St. Louis on the same basis as Missouri allows its own citizens to bring and maintain like actions in its courts, it necessarily recognized the fact that Missouri had fulfilled its obligation to the Federal Constitution in making its courts available to citizens and noncitizens alike for the bringing and maintaining of F.E.L.A. actions, as required by Article IV, Section 2 of the Constitution, with the result that this Court definitely removed, as not pertinent in this case, the irrelevant principle laid down in the *Chambers* and *Grimm* cases, which the court below cited and relied upon in support of its decision to quash the writs of mandamus in these cases. The principle of those decisions is confined to the availability of state courts, as guaranteed by Article IV, Section 2, of the Constitution and that principle has no bearing on the availability of the principle of *forum non conveniens*, as violating Article IV, Section 2, of the Constitution.

Of course, the doctrine of *forum non conveniens* does not stand at the threshold of the door of a court to contest the question whether a plaintiff may enter the court and there file and prosecute his action. This doctrine never questions the jurisdiction of the courts. This doctrine never comes into the picture until the plaintiff, in a transitory action, has been granted his Federal constitutional right, as guaranteed by Article IV, Section 2, to bring and main-

tain his action, and it is then, and only then, that the doctrine, if available, may be employed to require a state trial court, in the exercise of its discretion, to relinquish jurisdiction of the cause out of consideration of questions of suitableness of forum under the principle of *forum non conveniens.*

Incidentally, the instant cases serve to illustrate the respective functions of the Privileges and Immunities Clause and the doctrine of *forum non conveniens* with respect to the right of plaintiffs to bring and maintain F.E.L.A. actions in the courts of Missouri, as guaranteed by the Privileges and Immunities Clause. The petitioners in these cases did not undertake to employ the doctrine of *forum non conveniens* to prevent the plaintiffs in these cases from bringing and maintaining their actions in the Circuit Court of the City of St. Louis. They concede jurisdiction. The State of Missouri, by its constitutional provisions and statutes, has complied with the requirements of Article IV, Section 2, of the Constitution by providing the plaintiffs in these cases with the privilege of entering the Circuit Court of the City of St. Louis where they filed their actions and were actively prosecuting them when these petitioners filed their motion to dismiss under the doctrine of *forum non conveniens,* thus recognizing the right of the plaintiffs to prosecute their actions to final judgment if, in the discretion of the Circuit Court of the City of St. Louis, these petitioners are not entitled to have the action dismissed under the principles of the doctrine of *forum non conveniens.*

When the doctrine of *forum non conveniens* is available, a motion to apply the doctrine in any case assumes (1) that the doctrine is available in all cases alike, thus freeing the doctrine of any inhibitions of the Privileges and Immunities Clause; (2) that the plaintiff in the action in which the doctrine would be applied has exercised the privilege, as guaranteed him by Article IV, Section 2, of the Constitution, to bring and maintain his action in such court; and, (3) that the court has jurisdiction of the parties and of the

subject matter and may dispose of the case by retaining jurisdiction or by relinquishing jurisdiction, as proper discretion dictates. The cases of *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, and *Mooney* v. *D. & R. G. W. R. Co.*, 221 P. 2d 628, are representative of an unbroken line of Federal and state decisions in support of these propositions. The inquiry on a motion to apply the doctrine is whether the court, having indisputable jurisdiction, should hear the case or relinquish jurisdiction when on a balance of conveniences, another available forum is more appropriate for the trial, regardless of the citizenship of the parties.

While, as we think, it has been clearly demonstrated that the only question decided by the Missouri court is that since Missouri has a policy to allow its citizens to bring and maintain F.E.L.A. actions in its courts, it follows that not to allow citizens of other states the right to file like suits in Missouri courts would violate Article IV, Section 2, of the Constitution, which is a policy referring to the availability of state courts rather than the availability of the doctrine of *forum non conveniens* in F.E.L.A. cases, we shall briefly point out that the so-called policy of Missouri is nothing more nor less than a state policy to conform to a Federal constitutional policy with respect to the availability of state courts to all citizens alike, as guaranteed by Article IV, Section 2, of the Constitution, and that such policy bears no relation at all to a state policy concerning the availability of the doctrine of *forum non conveniens*.

**(d) Missouri policy is a policy to conform to Federal constitutional policy to make state courts available to citizens and noncitizens alike in transitory actions, as provided by Article IV, Section 2, of the Constitution, and such policy bears no relation to a policy to reject the doctrine of forum non conveniens in F.E.L.A. cases.**

There arose out of the adoption of the Constitution of the United States a policy derived specifically from Article

IV, Section 2, of the Constitution that when a state makes certain privileges and immunities available to its own citizens, such state cannot discriminatorily deny the equal enjoyment of those privileges and immunities to citizens of other states. Such policy is a Federal constitutional policy confined to considerations of discrimination as between citizens of the United States and such policy stands as a constant demand upon the states to make available to citizens of other states the same privileges and immunities that they provide for their own citizens. This Federal constitutional policy, applied to the circumstances of the instant cases, refers to the availability of courts. The policy simply means that since Missouri allows its citizens to bring and maintain F.E.L.A. suits in courts in Missouri, to discriminatorily deny to citizens of sister states the privilege of bringing and maintaining like suits in Missouri courts would constitute a violation of Article IV, Section 2, of the Constitution.

On the other hand, a state policy to accept or reject the availability of the doctrine of *forum non conveniens* performs another and a quite different function. As this Court said, in the *Mayfield* case, a state, according to its own notions of procedural policy, may promulgate a policy to reject, as it may accept, the availability of the doctrine of *forum non conveniens* in all F.E.L.A. cases, and whichever course a state chooses to take, no Federal issue comes into play. But, if a state should promulgate a policy which would withhold the availability of the doctrine of *forum non conveniens* to actions brought in Missouri courts by nonresident Missourians in F.E.L.A. cases and discriminatorily make that doctrine available in like suits brought in its courts by nonresident citizens of other states, such discriminatory policy would violate Article IV, Section 2, of the Constitution.

It is only necessary to read the pertinent provisions of the Missouri Constitution and the statutes quoted in a footnote at pages 22-23 of this brief, and the opinion of the

court below, to appreciate the indisputable assertions: (1) that these constitutional and statutory provisions were promulgated mainly to conform to the Federal constitutional policy with respect to the availability of courts to noncitizens of Missouri upon an equal basis with citizens of Missouri; (2) that such constitutional and statutory provisions do not purport to reject the doctrine of *forum non conveniens* in transitory actions brought and maintained in Missouri courts; and (3) that the Missouri court did not hold to the contrary in these cases with respect to either assertion (1) or (2).

Perhaps all states, including Missouri, have included provisions in their constitutions and enacted statutes to conform to Article IV, Section 2, of the Constitution, designed to allow noncitizens to sue in their courts upon an equal basis with their own citizens. We shall not consume the time to collect nor the space here to record such constitutional and statutory provisions of other states, because these constitutional and statutory provisions are of no material significance, since the states must conform to such Federal constitutional requirements, whether their constitutions and statutes expressly recognize these Federal demands or not. The Missouri statutes, which the Missouri court considered in this case, are typical of state statutes enacted to conform to the Federal constitutional policy, and, in respect to the Missouri statute, the Missouri court said, in the *Grimm* case, that the Missouri statute, making Missouri courts available in transitory actions to citizens of other states, was mandatory "in harmony and in keeping with Section 2 of Article IV and Section 1 of the Fourteenth Amendment of the Constitution of the United States." (Page 497, 143 S. W.)

**(e) Tested by the decision and opinion of this Court in the instant cases, the decision and opinion of the Missouri court reveals no law or policy in Missouri against the availability of the doctrine of forum non conveniens in F.E.L.A. cases.**

The Missouri court said that since it was the policy of Missouri to allow its citizens to file and maintain Federal Employers' Liability Act suits in its courts, it follows that not to allow citizens of other states the right to file and maintain such suits in the courts of Missouri would violate Article IV, Section 2, of the Constitution. That is precisely what the Missouri court said in the *Grimm* case and it is precisely what this Court said in the *Chambers* case. *But, such holding is not to say that after Missouri allows its citizens to bring and maintain F.E.L.A. suits in its courts, Missouri has a policy to reject the doctrine of forum non conveniens in all such suits, the practice of which policy would constitute such a standard of practice applicable to Missouri citizens, that discrimination would result, in any case where Missouri should permit the doctrine to be invoked in F.E.L.A. suits brought in Missouri courts by citizens of other states.* And that is what the Missouri court would have had to say, in effect, to enounce any policy rejecting the doctrine of *forum non conveniens* in these cases, that could come within the condemnation of Article IV, Section 2, of the Constitution. *The inescapable fact is that the Missouri court was writing about the availability of courts to litigants, and not about the availability of the doctrine of forum non conveniens to courts in the disposition of causes of litigants.*

For clinching proof of the soundness of our conclusion that the Missouri court was considering the policy of Missouri to permit noncitizens to bring and maintain F.E.L.A. actions in Missouri courts, as required by Article IV, Section 2, of the Constitution, and not any policy of Missouri rejecting the availability of the doctrine of *forum non con-*

*veniens* in F.E.L.A. actions, we call attention to the cases cited in Missouri Digest, *Master and Servant,* key number 85, listed in the Appendix herein at page 45, to which the court below referred in support of the existence of the policy it invoked to quash the writs of mandamus in these cases. When these cases are examined, it will be found that they are concerned with jurisdictional questions—questions with which we are not concerned at all—and that not in a single case was there an effort to invoke the doctrine of *forum non conveniens,* which is positive proof that the *Missouri court was considering the availability of courts and not the availability of the doctrine of forum non conveniens.*

In so far as we can ascertain, this is the first instance in which the question of the availability of the doctrine of *forum non conveniens* has been presented to the Supreme Court of Missouri, yet, remarkably enough, the Missouri court completely ignored that question.

Of course, Missouri has a policy to "allow" citizens of Missouri to bring and maintain F.E.L.A. actions in its courts, but Missouri allows such suits because its Constitution and statutes make it mandatory upon the State to do so, which is not to suggest, however, that Missouri has any policy rejecting the doctrine of *forum non conveniens,* after the right to bring and maintain an action has been exercised.[11]

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[11] It cannot be validly contended that when the Missouri court used the expression "maintain" in referring to the right of citizens and noncitizens alike to sue upon F.E.L.A. actions in Missouri courts, the court meant that Missouri had a policy to permit the continued *maintenance* of such actions against an effort to invoke the doctrine of *forum non conveniens.* We advert to the fact that the Missouri court, in referring to the right to "bring and maintain" F.E.L.A. actions in Missouri, uses the words and phrases "open its courts," "deny access" to courts, "Missouri permits citizens of this State to file" actions, "Missouri does allow its citizens to maintain" actions, "The policy of this State has been to bar none of its citizens from its courts," and other like expressions,

If further proof is necessary to demonstrate what policy the Missouri court invoked to dismiss the writs of mandamus in these cases, we would refer to the *Chambers* case which the Missouri court cited and quoted from at length in support of the theory upon which it improvidently quashed the writs in these cases. In that case, the plaintiff, Chambers, a citizen of Pennsylvania, brought a F.E.L.A. action, which arose in Pennsylvania, against the defendant Baltimore & Ohio Railroad Company in an Ohio court, under an Ohio statute which purported to give the Ohio court jurisdiction. Chambers, in defending an attack by the defendant Railroad Company upon the jurisdiction of the Ohio court to entertain the action, raised the Federal constitutional issue whether to deny the plaintiff access to the Ohio court would violate Article IV, Section 2, of the Constitution. While this Court held that the Ohio statute in that particular case did not operate to offend Article IV, Section 2, of the Constitution, it iterated the well-established principle that any policy of Ohio, derived from its statutes, with respect to the availability of its courts, must

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used those words and phrases interchangeably and conjunctively, to spell out the mandatory policy of Missouri to require its courts to take jurisdiction in F.E.L.A. actions without discrimination. Such manner of use of those words completely rules out any thought that the Missouri court, in using the word "maintain," employed the use of that word in the sense that the right to "maintain" an action meant that the doctrine of *forum non conveniens* could not be invoked.

It is obvious that the word "maintain," in the connection the court below used that word, has no significance, except as a jurisdictional corollary to the right to bring or file a suit. The right to bring or file an action necessarily implies the right to maintain such action, after it has been brought or filed, but that has nothing to do with the application of the doctrine of *forum non conveniens.* The plaintiff in the *Douglas* case enjoyed the statutory right to "maintain" his action in the New York courts, just as the plaintiffs enjoy such right in the instant cases, nevertheless, his action was dismissed by invoking the principle of the doctrine of *forum non conveniens.*

not operate to discriminate between citizens of Ohio and ciizens of Pennsylvania, a principle which concerns the constitutional guaranty of the availability of courts, but which does not concern the availability of the doctrine of *forum non conveniens,* the question with which we are now concerned.

To further demonstrate that the Missouri courts did not cite the *Chambers* case as an authority in support of any proposition that the principle of *forum non conveniens* was not available in Missouri, for F.E.L.A. suits, attention is called to the first decision of the Missouri court[12] in these cases where the Missouri court then, in rejecting the *Chambers* case as an applicable authority, disposed of the *Chambers* case with the comment, in part, as follows (page 110):

> "The opinion in the Chambers case deals only with the constitutionality of a state statute; it does not mention the Federal Employer's Liability Act nor the doctrine of forum non conveniens. This state does not have any such statute. We fail to see its applicability to the issue before us."

That the Missouri court would have rejected the *Chambers* case as a pertinent authority in its first decision and then embrace it as a decisive authority in its second decision would be as surprising as it is contradictory, except for the fact that the citation of and the reliance upon the *Chambers* case, in its second decision, reveals beyond any possible doubt that the policy invoked by the Missouri court to dismiss the writs of mandamus in these cases was the irrelevant policy to make Missouri courts available to all citizens alike in F.E..LA. cases, and not a policy rejecting the availability of the doctrine of *forum non conveniens* to Missouri courts in the disposition of F.E.L.A. causes.

Finally, we will refer to the *Grimm* case as indicating beyond question that the Missouri court did not in that case recognize the existence of any policy in Missouri rejecting

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[12] *State, ex rel. Southern Ry. Co.* v. *Mayfield, Judge,* 359 Mo. 827, 224 S.W. 2d 105.

the doctrine of *forum non conveniens*. However, we are not unmindful of a statement by the Missouri court in the instant case in its reference to the *Grimm* case that may possibly be misleading, but we should not be misled by that statement. While the Missouri court did not say, in its last opinion, that it had considered the doctrine of *forum non conveniens* in the *Grimm* case, a casual reading of what the Missouri court said, in its last opinion, about the *Grimm* case might create an erroneous impression that the Missouri court inferred that it had formerly given consideration to and rejected the invocation of the doctrine of *forum non conveniens* in the *Grimm* case, in principle, if not in name. The Missouri court, in discussing the *Grimm* case, at page 109, 240 S. W. 2d, said:

> "A motion to dismiss had been made in the trial court in which every essential element of a motion forum non conveniens was present although the motion was not referred to by its Latin appellation and the trial court or this Court did not so designate it. It contained more reasons for its sustention than the motions involved in these cases before us, but was denied by the circuit court."

But, we point out that the Missouri court inadvertently failed to call attention to the fact that the motion to dismiss in the *Grimm* case was directed to the jurisdiction of the court, and not to the discretion of the court to relinquish jurisdiction under the principle of *forum non conveniens*. The propriety of the jurisdiction of the Missouri court was the central issue in that case from the moment the action was filed until the final decision of the Supreme Court of Missouri, which affirmed the propriety of jurisdiction. We do not hesitate to concede that a trial court of Missouri does not possess the power to decline to take jurisdiction of a transitory action under the principle of *forum non conveniens*. Apart from the fact that because of the very nature and character of the doctrine it could never be em-

ployed to prevent a court from taking jurisdiction of a cause, the Missouri statutes made it mandatory upon the court in the *Grimm* case to take jurisdiction, with all that "jurisdiction" implies, but no more. So, since the motion to dismiss was directed to the jurisdiction of the court, and since the court was powerless to have invoked the doctrine to prevent the court from taking jurisdiction, it is wholly immaterial that there may have been present in the motion to dismiss in the *Grimm* case some of the usual elements involved in a motion to dismiss under the principle of the doctrine of *forum non conveniens.* Whether the Missouri court in its exercise of jurisdiction could have relinquished its jurisdiction in the *Grimm* case under the principle of *forum non conveniens* is a matter entirely outside that case, and was not even alluded to in the decision and opinion.

Lest there be some misunderstanding about what the Missouri court held in the *Grimm* case, we think we should call attention to the issues stated by the Missouri court in the *Grimm* case, on page 490, 143 S. W. 483, as follows:

> "* * * It appears therefore on the record that the insurance contract involved in the suit was made in Illinois, with a citizen of Illinois, to be performed in Illinois; that the insured died in Illinois; and that plaintiff lives in Illinois. The question therefore arises: May actions be maintained in Missouri, and, if so, has the circuit court jurisdiction, and is the service of process sufficient?
>
> "Upon that statement of the case, counsel for the petitioner insist that the circuit court has no jurisdiction of the cause for the reasons: '(a) The service of process was insufficient; and (b) the courts of Missouri have no jurisdiction over foreign insurance companies in causes of action arising out of business done in other states with citizens of those states.' "

The Missouri court, in sustaining the jurisdiction of the Missouri trial court, overruled the motion to dismiss, upon

the ground that for the trial court to deny to the plaintiff in the *Grimm* case access to the Missouri court in an action brought pursuant to Missouri statutes, Sections 856 and 857, Mo. R.S.A. (then Sections 1736 and 1737, R.S. Mo. 1909) would violate Article IV, Section 2, of the Constitution, citing in support of such decision the decisions of this Court in *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142; *Cole* v. *Cunningham*, 133 U. S. 113; and *International Textbook Company* v. *Pigg*, 217 U. S. 9. The citation of these cases clearly demonstrates that the decision of the Missouri court, in the *Grimm* case, was confined to the question of availability of courts and did not concern the availability of the doctrine of *forum non conveniens*, and there can be no permissible inference to the contrary.

However, we wish to emphasize the fact that if the Missouri court has expressed in these cases an erroneous impression of what it held in the *Grimm* case, it is crystal clear that the Missouri court, in the instant case, has not held that Missouri has a policy rejecting the doctrine of *forum non conveniens* in F.E.L.A. actions, and that is the pivotal question in these cases.

## II.

**In the Absence of the Finding by the Supreme Court of Missouri of any Missouri Law or Policy Rejecting the Availability of the Doctrine of Forum Non Conveniens in Federal Employers' Liability Act Suits, the Missouri Court Failed to Carry Out the Mandate of This Court in that it Did Not Decide the Question Whether Trial Courts of Missouri Possess the Inherent Power to Invoke the Doctrine of Forum Non Conveniens in Federal Employers' Liability Act Suits.**

In order that we may keep this aspect of the decision and opinion of the Missouri court in its proper perspective, we should call attention to the original issue presented to the Supreme Court of Missouri, in the September Ses-

sion, 1949. We will quote the question posed by the Supreme Court of Missouri, in its first opinion,[13] September Session, 1949, at page 107, as follows:

> "* * * May a trial judge of a circuit court of this state exercise his judicial discretion in determining whether to retain or relinquish jurisdiction of a case brought under the Federal Employers' Liability Act when a motion to dismiss on the sole ground of *forum non conveniens* is presented before him for a ruling?"

It is obvious, particularly in the light of this Court's mandate in these cases, that this question involves two major elements—(1) whether there is any policy of Missouri to accept or reject the availability of the doctrine of *forum non conveniens* in Employers' Liability Act cases, and (2) if there is no policy to reject the doctrine, whether state trial courts of Missouri possess the inherent power to make the doctrine available and to apply it in this category of cases. So, if it should appear in these cases that Missouri possesses no policy to reject the doctrine, the Missouri court would not have discharged its obligations in carrying out the mandate of this Court unless its decided the question whether, in the absence of any policy to reject the availablity of the doctrine, Missouri trial courts possess the inherent power to invoke the doctrine. This the Missouri court did not do.

While the overwhelming weight of authority[14] is to the

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[13] *State* v. *Mayfield*, 359 Mo. 827, 224 S.W. 2d 105.

[14] *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501; *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U.S. 377: *Logan* v. *Bank of Scotland*, 1 K.B. 141; *Collard* v. *Beach*, 81 App. Div. 582, 81 N. Y. Supp. 619; *Universal Adj. Corp.* v. *Midland Bk. Ltd.*, 281 Mass. 303, 184 N.E. 152; *Hagen* v. *Viney*, 124 Fla. 747, 169 So. 391; *Jackson & Sons* v. *Lumbermens Mutual*, 68 N.H. 341, 168 Atl. 895; *Thistle* v. *Halstead*, 95 N.H. 87, 58 Atl. 2d 503; *Kantakevich* v. *D. L. W. RR. Co.*, 18 N.J. Misc. 77, 10 Atl. 2d 651; *Quigley Co.* v. *Asbestos United Inc.*, 134 N.J. Eq. 312, 35 Atl. 2d 432; *Whitney* v. *Madden*, 400 Ill. 185, 79 N.E. 2d 593; *Horners* v. *Pleasant Creek Mining Co.*, 165 Ore. 683, 107 P. 2d 989; *Morris* v. *Mo. Pac. R. Co.*, 78 Tex. 17, 14 S.W. 228;

effect that, in the absence of state policy against the availability of the doctrine of *forum non conveniens,* state trial courts possess the inherent power to invoke the doctrine, Missouri has not decided that question, and it is respectfully submitted that the petitioners in these cases are entitled to have the Missouri court pass upon that question.

## III.

**The Missouri Court Erroneously Applied Principles of Federal Constitutional Limitations on the Right of States to Decline to Accept Jurisdiction in F.E.L.A. Cases When, in Fact, Missouri Has Already Accepted Jurisdiction of the Parties and Subject Matter in These Cases, With the Result That the Decision of the Missouri Court, Quashing the Writs of Mandamus, Turned Upon Irrelevant Federal Constitutional Principles Governing the Availability of State Courts, and not Upon the Existence of Missouri Policy With Respect to Availability of the Doctrine of Forum Non Conveniens.**

Not only did the Missouri court fail to execute the mandate of this Court in the *Mayfield* case to proceed with the disposition of these cases according to its own local law and not inconsistent with the opinion of the Court in the *Mayfield* case, but that court, in dismissing the writs of mandamus in these cases, has decided Federal questions contrary to the law and decision of this Court in these cases, and in other cases.

We have herefore demonstrated that the Missouri court misconceived and did not recognize the distinction between a state policy that would require the State to make its courts available to all citizens alike in F.E.L.A. suits, as provided by Article IV, Section 2, of the Constitution, and

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*So. Pac. Co.* v. *Graham,* 12 Tex. Civ. App. 565, 34 S.W. 135; *Grovey* v. *Washington National Life Ins. Co.,* 196 Ark. 697, 119 S.W. 2d 503; *Stewart* v. *Lichtenberg,* 148 La. 185, 86 So. 734; *Overfield* v. *Penn. RR. Co.* 113 F. 2d 6 (3rd Cir. 1940).

a state policy rejecting the availability of the doctrine of *forum non conveniens* in F.E.L.A. suits, which is a doctrine presupposing that such requirements of Article IV, Section 2, have already been satisfied, and a doctrine which could never operate to question the right of any citizen to have access to the courts of a state in a transitory action.

Now we wish to point out that the decision of the Missouri court was not rendered upon the basis of the indisputable facts of these cases, as revealed by the record, and as this Court assumed them to be in its opinion. These pivotal facts are that Missouri has already permitted the noncitizen plaintiffs in these cases to bring and maintain these actions in the Missouri court; and, that the Missouri court has jurisdiction of the parties and the subject matter. So, every requirement of Article IV, Section 2, of the Constitution, in so far as the availability of Missouri courts is concerned, has been fully satisfied.

The Federal constitutional principle that the Missouri court considered and applied, as the basis for its decision in these cases, refers to a situation where the defendants in these actions would be attacking the jurisdiction of the Missouri court to entertain these causes, as was the situation in the *Chambers* and *Grimm* cases—a situation which does not exist here, because the jurisdiction of the Missouri court to make final disposition of these causes is undeniably established.

Upon the basis of the mistaken and irrelevant theory that these defendants are seeking to bar the plaintiffs from bringing and maintaining these actions in the Missouri court, the court below has committed the clear error of holding that to permit the writs of mandamus to issue in these cases (the execution of which involves the application of the doctrine of *forum non conveniens*) would violate Article IV, Section 2, of the Constitution, or of the equal protection clause of the Fourteenth Amendment, when the doctrine of *forum non conveniens* could not possibly operate to prevent a state court from taking jurisdiction

of a transitory action for the reason that the doctrine may be invoked only after a court has acquired jurisdiction of the parties and the subject matter, such jurisdiction being indispensable to the power of the court to invoke the doctrine. *Gulf Oil Corporation* v. *Gilbert,* 330 U.S. 501.

Thus, the error of the Missouri court in this aspect of the case is twofold: (1) it ignored the fact that the Missouri trial court has undeniable jurisdiction of these causes, and, having ignored such jurisdiction, the Federal constitutional principle that would inhibit Missouri from discriminatorily denying the plaintiffs in these causes access to Missouri courts was wholly irrelevant; and, (2) even assuming that the Missouri trial court had not acquired jurisdiction of the parties and the subject matter in these causes, because of the very character and nature of the doctrine of *forum non conveniens,* that doctrine could not possibly operate to question the Federal constitutional duty of a state trial court to take jurisdiction of these causes.

Had the Missouri court recognized the fact that the Circuit Court of the City of St. Louis had jurisdiction of these causes, and had the court then given legal effect to such jurisdiction, the court below would have been faced with the necessity of deciding the question whether the doctrine of *forum non conveniens* was available in Missouri in F.E. L.A. suits, but by the failure of the Missouri court to recognize the jurisdiction of the Missouri court and to give legal effect to it, the Missouri court has avoided complying with the mandate of this Court to decide the very question of state law that this Court remanded the cases to have decided, and the court below has indirectly disposed of these cases upon the basis of a wholly academic and irrelevant Federal constitutional principle.

## IV.

**This Court Will Review Upon a Writ of Certiorari the Final Decision of the Highest Court of a State Purporting to Have Been Made Pursuant to Its Mandate in Order to Determine Whether the Mandate Has Been Carried Out.**

Upon inquiry concerning the question whether the highest court of a state has failed to carry out the mandate of this Court to decide the questions arising out of the administration of Federal law, this Court will review the decision of state courts upon state questions upon petition for writs of certiorari revealing that the state court has failed to conform to the mandate of this Court, if the decision of the state court, purporting to have been made pursuant to the mandate is final. *In re - Blake and Others, Ex Parte,* 175 U.S. 114; *Blake* v. *McClung,* 176 U.S. 59; *Lavender* v. *Kurn,* 329 U.S. 762; *Lavender* v. *Clark,* 329 U.S. 674; *Fisher* v. *Hurst,* 333 U.S. 147; *Sipuel* v. *University of Oklahoma,* 332 U.S. 631; *Cole* v. *Arkansas,* 338 U.S. 445; *Ex Parte Texas,* 315 U.S. 8.

## CONCLUSION.

Not only did the Missouri court inadvertently and improvidently fail to carry out the mandate of this Court in deciding questions of state law important in the administration of Federal law but the Missouri court has, as we contend, incorrectly applied Federal law to quash the writs of mandamus.

If there was sufficient room for doubt on the part of this Court whether the Missouri court had decided these cases in its first decision on the basis of Federal law rather than state law to justify this Court in accepting jurisdiction at the October Term, 1949, it is respectfully contended that there is now no possible doubt that the Missouri court, in its last decision, decided these cases on the basis of Federal law rather than upon state law; and that in view of the

errors committed by the court below this Court should feel compelled to take jurisdiction again to the end that "questions important to the enforcement of the Federal Employers' Liability Act by the courts of the States" be finally decided by the Missouri court, free of any supposed compulsion of the Constitution or statutes of the United States.

Respectfully submitted,

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## APPENDIX.

**List of Cases Cited in 20 Missouri Digest, Master and Servant, key number 85.**

*McDermott* v. *Pacific R. Co.*, 30 Mo. 115 (1860)
*Riley* v. *City of Independence*, 258 Mo. 671, 167 S.W. 1022 (1914)
*Hughes* v. *Mississippi River & B. T. Ry.*, 309 Mo. 560, 274 S.W. 703 (1925)
*Murphy* v. *St. Louis & I. M. R. Co.*, 4 Mo. App. 565
*Halliburton* v. *Wabash R. Co.*, 58 Mo. App. 27
*Kelly* v. *Stewart*, 93 Mo. App. 47 (1902)
*Sutherland* v. *Garetson-Greason Lumber Co.*, 149 Mo. App. 338, 130 S.W. 40
*Gunning* v. *J. R. Kelly Cooperage Co.*, 178 Mo. App. 244, 165 S.W. 1140
*Harville* v. *Harrison Engineering & Constr Co.*, 7 S.W. (2d) 1032
*Courter* v. *Tootle, Wheeler & Moter Merchantile Co.*, 136 Mo. App. 517, 118 S.W. 505
*Saversnick* v. *Schwarzchild & Sulzberger*, 141 Mo. App. 509, 125 S.W. 1192
*Smart* v. *Wabash R. Co.*, 164 Mo. App. 61, 148 S.W. 172
*Manker* v. *Standard Oil Co. of Indiana*, 221 S.W. 139, 203 Mo. App. 404, certiorari quashed *State ex rel. Manker* v. *Ellison* (Sup. 1920) 230 S.W. 611
*Tracy* v. *Terminal R. Ass'n. of St. Louis*, 170 F. 2d 635
*Fairbanks, Morse & Co.* v. *Walker*, 160 F. 896, 88 C.C.A. 78
*Kurn* v. *Stanfield*, 111 F. 2d 469
*Smith* v. *Southern Illinois & Missouri Bridge Co.*, 326 Mo. 109, 30 S.W. 2d 1077 (1930)
*Schaum* v. *Southwestern Bell Telephone Co.*, 336 Mo. 228 (1934)
*Kelso* v. *W. A. Ross Const. Co.*, 337 Mo. 202, 85 S.W. 2d 527
*Graczak* v. *City of St. Louis*, 356 Mo. 536, 202 S.W. 2d 775
*Griffith* v. *Gardner*, 358 Mo. 859, 217 S.W. 2d 519
*Lavender* v. *Illinois Cent. R. Co.*, 358 Mo. 1160, 219 S.W. 2d 353, certiorari denied 338 U.S. 822, re-hearing denied 338 U.S. 881
*Marsanick* v. *Luechtefeld*, 157 S.W. 2d 537
*Ottley* v. *St. Louis-San Francisco Ry. Co.*, 232 S.W. 2d 966

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS.
WILLIAM J. KELLY, *Plaintiff*,

v.

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, a corporation, *Defendant*.
Civil Action at Law No. 13578

(and nine other separate actions)—Civil Actions at Law Nos. 12263, 14343, 14342, 13383, 13751, 13521, 12317, 11003, 10848.

**Order.**

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A joint and several verified motion to dismiss was here filed by the same defendant to apply in each of the above styled cases. Leave to withdraw each of the defendants' answers was sought and alternative relief to dismissal such as a general continuance or a transfer of venue in each case to adjoining counties of the State where trials could be had without undue interference with the administration of justice was also requested in such motion.

The said joint and several motion was argued by counsel for both parties on September 24, 1948, and briefs requested.

(1) However, on the 5th day of October, 1948, because the parties had taken depositions in the case of *Kelly* v. ***Thompson, etc.,*** **#13578,** and the same had previously been set for trial, this Court denied the motion as to said cause, and ordered that it be tried, but in said order did save and reserve its decision on said motion as to the remaining cases.

(2) Now on this 27th day of January, 1949, all briefs having been furnished, and the Court, after having been properly advised in the premises, and after having made personal investigation and observations as to the condition of the law, chancery and criminal dockets and the

administration of the judicial business of the St. Clair County Circuit Court, finds:

1. That in each of the cases sought to be dismissed, the plaintiff brought his suit for damages under the provisions of the Federal Empolyers' Liability Act for injuries sustained while in the employ of the defendant.

2. That the defendant in each case is Guy A. Thompson, Trustee of the Missouri Pacific Railroad Company, a citizen and resident of Missouri, and in his capacity as trustee operates a railroad in Illinois and Missouri, and other states in the South and Southwest.

3. That each plaintiff is represented by a lawyer with offices in Chicago, Illinois, but that in each case he associates with him a St. Clair County, Illinois lawyer on a per diem basis.

4. That the residence and place of accident of each plaintiff and the distance from the County Seat of St. Clair, Illinois, is as follows:

| No. of case | Pl. residence | Place of Accident | Mileage from Belleville, Ill. |
|---|---|---|---|
| 12263 | Little Rock, Ark. | Same | 300 |
| 14343 | Kansas City, Mo. | Same | 300 |
| 14342 | Little Rock, Ark. | Same | 300 |
| 13751 | Little Rock, Ark. | Same | 300 |
| 11003 | Kansas City, Mo. | Same | 300 |
| 13383 | Fort Smith, Ark. | Same | 375 |
| 13521 | Hope, Arkansas | Same | 470 |
| 12317 | Osawatomie Kansas | Same | 450 |
| 13751 | Little Rock, Ark. | Same | 300 |

5. That there are no witnesses, parties, citizens, resident or taxpayers residing in St. Clair County, Illinois, who have a real or material interest or who are involved in any of the suits sought to be dismissed.

6. That in each case the additional cost to the defendant to try a case of this character in St. Clair County, Illi-

nois, over a County in the State where the accident occurred or where the plaintiff resides will approximate Five Hundred Dollars; that defendant, as well as the plaintiff, is at a disadvantage in trying a case in a foreign jurisdiction because of the inability to compel unwilling witnesses to attend trial and the unsatisfactory use of depositions at a trial. That the additional cost to the plaintiff, and the difficulties which sometimes beset him in a foreign jurisdiction often times exceed any alleged advantages he purportedly receives in choosing a forum so far from home, making the supposed alluring advantage to him more illusory than real.

7. That the St. Clair County Circuit Court is believed to have the heaviest criminal, civil and chancery docket of any County of the State, save Cook County. That the docket has increased by sixty per cent over a comparable period prior to the war. That a single presiding judge (the three Circuit Judges of this district alternating) did, during 1947 and 1948, dispose of cases as follows: 858 Law (jury and non-jury), 982 chancery, 506 criminal, 170 habeas corpus, 360 motions, decree modifications, citations, etc., and 210 probation hearings. That from January 1, 1948, to September 21, 1948, 1025 new law, chancery and criminal cases were filed. That on the last mentioned date there were on file and undisposed of 1334 cases, some of which cases where jury trial were requested were on file more than eighteen months. That in a large majority of said pending cases St. Clair County was and is the only county of venue and the witnesses and parties are residents and taxpayers of the County.

8. That for the past year St. Clair County has been in a critical financial plight. That jurors are now being paid by vouchers due, but not necessarily payable, in December, 1949.

9. That many cases similar to those here sought to be dismissed have in the past three years been brought in the St. Clair County Circuit Court by the present counsel

for the respective plaintiffs. That the usual time required for trial of such a case is two to four court days. That such trial results in no benefit to any resident or taxpayer of St. Clair County, but instead, because of the congestion of the docket prevents the trial of two or more cases where purely local litigants and witnesses are interested. That such a trial costs the taxpayers of St. Clair County in jury fees, court's and court attache's time approximately $600.00 to $900.00.

10. That while Section 6 of the Federal Employers' Liability Act confers jurisdiction upon this court to try these cases, it is not mandatory upon the Court to accept that jurisdiction. That it is within the inherent power of this Court in its discretion to decline jurisdiction of litigation between two non-residents when its acceptance will and does interfere with its own orderly and efficient administration of justice, unnecessarily burdens the Court, and when such litigation can be conducted in an available forum in the State of plaintiff's residence or in a State where the accident occurred, which is more conveniently located for the parties, and where the elements of undue cost, vexation, frustration and harassment to the parties does not exist.

11. That each case here sought to be dismissed, as well as any other case similarly brought in which a dismissal on similar grounds is prayed, must be considered on its own particular merits. In several of the cases embraced by this motion, the defendant has taken plaintiff's deposition while in others, the Statute of Limitations has either run or about to expire. In such cases the allowance of the motion would materially prejudice the plaintiff's rights.

IT IS THEREFORE, ORDERED:

(a) That in the case of *Alee Richardson* v. *Thompson, Trustee, etc.*, No. 12263; *Raymond E. Lipscomb* v. *Thompson, Trustee, etc.*, No. 13751; *Cloyd Pottorff* v. *Thompson, Trustee, Missouri Pacific Railroad Co.*, No. 12317; *Leroy C. Baird* v. *Thompson, Trustee, etc.*, No. 10848; *Harry*

*Carter* v. *Thompson, Trustee, etc.,* No. 11003, the defendant's joint and several motions to dismiss, etc., are and the same are hereby denied.

(b) That in the cases of *Sherman Garrison* v. *Thompson, Trustee, etc.,* No. 14343; *Preston Garrison* v. *Thompson, Trustee, etc.,* No. 14342; *James A. Jones* v. *Thompson, Trustee, etc.,* No. 13383; *Arnie C. Green* v. *Thompson, Trustee, etc.,* No. 13521, defendant is hereby given leave to withdraw his answer, and the Court, on consideration of his several motions to dismiss, does order the plaintiffs' several complaints be, and the same are, hereby dismissed without prejudice to each plaintiff to rebring his action elsewhere.

ENTER:

/s/ RALPH L. MAXWELL,
*Circuit Judge.*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
In and For the County of Los Angeles.

No. 560557.

Frieda Jergins, Administratrix of the Estate of Jose Rodriguez, deceased, *Plaintiff*,

v.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, *Defendant*.

No. 569609.

John M. Martin, *Plaintiff*,

v.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, *Defendant*.

## MEMORANDUM RULING.

(Filed Apr. 28, 1950. Harold J. Ostly, County Clerk, by J. E. Rose, Deputy.)

The Federal Employers Liability Act provides, among other things, "* * * no case arising under this chapter and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

It must be admitted that these actions have been brought in a "state court of competent jurisdiction" and under the above provision could not be transferred to a Federal District Court on application thereto for such transfer.

The motions here, however, are not to remove the actions to a Federal Court, but for this Court to dismiss on the ground of *forum non conveniens*.

In *Leet* v. *Union Pacific R. R. Co.*, 25 C. 2d 605 (Dec. 1944), 325 U. S. 866, at page 608 our Supreme Court held: "The doctrine of *forum non conveniens*, claim of a burden

in interstate commerce or war conditions constitute no justification for a refusal to exercise jurisdiction. * * * If the plaintiff by reason of section 56 has an absolute right to have the action tried in the named courts, there is no room for the doctrine. It has been repeatedly held that the right to have an action brought under the act tried in one of the mentioned *federal district courts* is absolute (citing cases) and that right cannot be defeated by the doctrine of *forum non conveniens,* convenience, or other equitable grounds such as vexatious suits or anything else except Congressional action, the Court has a duty to exercise its jurisdiction." (25 C. 2d pp. 608-9.)

By dictum in *Chesapeake & Ohio Ry.* v. *Vigor,* 90 F. 2d 7 (certiorari denied, 302 U. S. 705), the Circuit Court of Appeals stated: "It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harassment." (*Leet* v. *Union Pacific,* p. 615.)

In *Miles* v. *Illinois Central R. R.,* 315 U. S. 698, the Supreme Court of the United States reversed an injunction issued in a state court in Tennessee enjoining, on the ground of *forum non conveniens,* a resident widow from prosecuting an action for her husband's death occurring in Tennessee, in a Missouri state court where the railroad did business but had no residence, under a state law permitting such an injunction.

In *Leet* v. *Union Pacific* the Court said (p. 612) "The *Miles* case is completely decisive that the doctrine of *forum non conveniens* is no justification for a state court to refuse jurisdiction of an action under the Federal Employers Liability Act. Likewise, it is conclusive that the state court *must* take jurisdiction. It has no choice in the matter and no rule or policy on its part alters the situation." (Note: The *Miles* case followed the *Kepner* case hereinafter referred to.)

This would seem to be conclusive.

However, the *Leet* case was decided in 1944, and with respect to the transfer of civil actions brought in federal district courts there has been "Congressional action" by the enactment on June 25, 1948 of Section 1404(a) Title 28 U. S. C., which provides "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The Supreme Court of the United States has held that the provisions of Section 1404(a) apply to F.E.L.A. actions commenced in United States District Courts. (*Ex parte Collette* Advance Opinions, U. S. Supreme Court, Vol. 93, No. 16, page 901, decided May 31, 1949.) With reference to Section 1404(a) the opinion states at page 903: "The Reviser's notes, which accompany each section of the Code, here read as follows: 'Subsection (a) was drafted in accordance with the doctrine of *forum non conveniens*, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co.* v. *Kepner*, 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employers Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the Court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice so to do.' "

The question is, does this Congressional action which applies to federal district courts give a state court the right to dismiss an action on the ground of *forum non conveniens?*

It is obvious that this Court cannot transfer the action to a federal district court or to the court of another state. All it may do is to grant or deny the motion to dismiss.

Is this Court precluded from granting a motion to dismiss in view of the holding to the contrary in *Leet* v. *Union*

*Pacific R. R. Co., supra.* Does *Leet* v. *Union Pacific* still declare the law?

The Court is of the opinion that all Federal decisions prior to *Ex Parte Collette* regarding the right of a federal district court to transfer a case to another district or division on the ground of *forum non conveniens* must be deemed to be overruled by the decision in that case. In this case the Court said at page 905: "The inapplicability of *forum non conveniens* to Liability Act suits derives from the *Kepner* decision." (314 U. S. at 54.) At page 907 the Court states that Congress fully realized that *forum non conveniens* was henceforth to be applicable to Federal Employers Liability Act suits. At page 909 the Court states with respect to Section 1404(a) "It was accompanied by a reviser's note which recited that 'Subsection (a) is new. It was drafted in accordance with a memorandum of Mar. 7, 1945, from the author of Moore's Federal Practice, stating that recognition should be given the doctrine of *forum non conveniens* * * *.' The balance of that note was substantially the same as the present reviser's note; it expressly cited the *Kepner* case, an action under the Federal Employers Liability Act, as demonstrating the need for Section 1404(a) *and the reviser's notes were before the Congress at every subsequent legislative step.*"

The *Kepner* case arose in Ohio, and involved the right of the state court to apply the doctrine of *forum non conveniens.* The Supreme Court of the United States in reviewing the decision of the Supreme Court of the State of Ohio, states (314 U. S. at p. 49, 86 L. ed. at p. 31):

> "The basis for the decision below was that respondent employee was privileged to enjoy, *without interference from a state court,* the venue allowed by the Federal Employers Liability Act." (Italics added.)

In *Ex Parte Collette* (page 905) the Court states, "The inapplicability of *forum non conveniens* to Liability Act suits derive from the *Kepner* decision" *a state court action.*

With reference to the reviser's note respecting the purpose and effect of Section 1404(a), the Court said in the *Collette* case (page 907), "it expressly cited the *Kepner* case, an action under the Federal Employers Liability Act, *as demonstrating the need for Section 1404(a)*" (Italics added.) As above stated, the *Kepner* case was a state court action.

It would seem clear from the foregoing that Congress intended, even though Section 1404(a) only mentions federal district courts, to permit the application of *forum non conveniens* to state court actions, as the *Kepner* case was such an action.

Congress recognized the injustice of compelling defendants in F.E.L.A. actions to defend in an inconvenient forum, selected by the plaintiff, and permitted a transfer in federal courts when it is in the interest of justice so to do.

This recognition of the applicability of *forum non conveniens* to F.E.L.A. cases brought in federal courts should, in justice, be extended to cases brought in state courts. "Where the reason is the same the rule should be the same." (C. C. 3511.)

If the rule is not applied to actions brought in state courts then a plaintiff could file his action in a federal district court, and upon a motion for transfer on the ground of *forum non conveniens* being filed dismiss the action and file a new action in a state court, in the same district, and thus defeat the purpose of Congress in adopting Section 1404(a).

It can be contended, with sound reason, that Congress has established *forum non conveniens* as a federal policy in all civil actions in federal courts, including actions under F.E.L.A. (see *Ex Parte Collette*), and as state courts in such actions are "clearly operating within the orbit of federal law", federal laws which apply to actions in federal courts brought under said act apply with equal force to actions brought under the act in state courts. To hold otherwise would be a denial of the equal protection and application of the law.

Turning to the cases here under consideration: The accident involved in the *Jergins* case, No. 560557, and in which Rodriguez received his fatal injuries, occurred on January 14, 1949, in Prescott, Arizona. The action was instituted by the administratrix appointed by this court. It appears that the administratrix is not an heir-at-law of decedent (Compl. par. VII). The verified answer alleges, directly, that all of the heirs were at all times referred to in the complaint and are now residents of Arizona, and that the administratrix is an employee in the office of her attorneys. It is further alleged that all of the witnesses to said accident and the medical attendants familiar with the case reside in Arizona and that great and unnecessary expense will be incurred by defendant if the case is tried in Los Angeles County. In the *Martin* case, No. 569069, it is alleged that plaintiff was employed by the defendant in its railroad yards in Argentine, Kansas, and that he was injured there on May 26, 1948, while engaged in interstate commerce. There is no allegation that he is a resident of California. The answer alleges and the affidavits filed in support of the motion aver that all of the witnesses to the accident and the doctors who have treated and examined plaintiff, will have to be brought from Kansas to testify or their depositions will have to be taken at considerable inconvenience and great and unnecessary expense.

The Court is of the opinion that, since the doctrine of *forum non conveniens* is now recogniezd as applicable to F.E.L.A. cases by the Supreme Court of the United States, in all cases where proper showing of *forum non conveniens* has been made and where ample time still remains to file another action in the appropriate jurisdiction, a motion to dismiss should be granted. In the *Jergins* case nearly 20 months and in the *Martin* case over a year remain before the actions will be barred.

In both of the foregoing cases the Court determines that the motion to dismiss should be granted as it is necessary for the convenience of the parties and witnesses and it is in the interest of justice so to do.

The motion to dismiss is granted.

April 28, 1950.

ARNOLD PRAEGER,
*Judge.*

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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

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|---|---|
| STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, Petitioner, v. WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent. | No. 286. |
| STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Petitioner, v. DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent. | No. 287. |

## BRIEF

**In Opposition to Petition for Writs of Certiorari.**

### STATEMENT.

While there is room for controversy about petitioners' statement as to what this Court held and ruled in its earlier opinion in these cases,[1] we decline to enter into any controversy about that matter at this time, and accept petitioners' "Summary Statement of the Cases" as being substantially correct.

1 Missouri ex rel. Southern Railway Co. v. Mayfield, 340 U. S. 1.

Likewise, we concede that this Court has jurisdiction to review by certiorari the latest decision of the Supreme Court of Missouri in these cases,[2] for the purpose of determining whether that State court has in that decision carried out the mandate of this Court under its earlier opinion in these cases.

However, we do say that there is no sound ground for such review here, because petitioners' petitions for writ of certiorari are predicated upon a wholly false premise in their assertion that the Supreme Court of Missouri, in its latest decision in these cases, does not reveal that Missouri has any policy rejecting the availability of the doctrine of forum non conveniens in Federal Employers' Liability Act cases.

## SUMMARY OF ARGUMENT.

1. The Supreme Court of Missouri, in its opinion and decision under the mandate of this Court, clearly and unequivocally ruled that it is the policy of Missouri to reject the doctrine of forum non conveniens in all cases, specifically including cases under the Federal Employers' Liability Act.

State ex rel. Southern Ry. Co. v. Mayfield, .... Mo. ...., 240 S. W. 2d 106.

2. The latest opinion and decision of the Supreme Court of Missouri is in specific compliance with the mandate of this Court under its opinion and decision in these cases.

State ex rel. Southern Ry. Co. v. Mayfield, .... Mo. ...., 240 S. W. 2d 106;

Missouri ex rel. Southern Ry. Co. v. Mayfield, 340 U. S. 1.

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2 State ex rel. Southern Ry. Co. v. Mayfield, .... Mo. ...., 240 S. W. 2d 106.

## ARGUMENT.

The Supreme Court of Missouri, in its opinion and decision of which petitioners now seek review by this Court, clearly and unequivocally said (R. 87; 240 S. W. 2d, l. c. 108):

> "The policy of this state has been to bar none of its citizens from its courts where there is proper venue and jurisdiction of the parties and subject-matter, and this applies to citizens who are residents as well as non-residents."

By this pronouncement, the Missouri court has necessarily and unqualifiedly ruled that, under the policy of Missouri, the doctrine of forum non conveniens is rejected in that State in all cases.

The Missouri court then went on to rule, further, that (R. 89; 240 S. W. 2d, l. c. 109):

> "Since the policy of this state has been, and is, to allow citizens of Missouri (resident and non-resident) to bring and maintain suits under the Federal Employers' Liability Act in the courts of this state, we cannot bar citizens of other states from doing likewise."

By this pronouncement, the Missouri court has necessarily and unqualifiedly ruled that, because of the policy of Missouri to reject the doctrine of forum non conveniens in all cases, the doctrine is rejected in that State as to actions under the Federal Employers' Liability Act.

Clearly, by these rulings, the Missouri court has proceeded consistently with the opinion of this Court in these cases promulgated November 6, 1950. In that opinion this Court said (340 U. S., l. c. 3):

> "A decision by the highest court of a State determining that the doctrine of *forum non conveniens*

cannot bar an action based on the Federal Employers' Liability Act, in the circumstances before us, may rest on one of three theories. (1) According to its own notions of procedural policy, a State may reject as it may accept the doctrine for all causes of action begun in its courts. If denial of a motion to dismiss an action under the Federal Employers' Liability Act is rested on such a general local practice, no federal issue comes into play. (It is assumed of course that the State has acquired jurisdiction over the defendant.)"

In the light of these quotations from the latest opinion and decision of the Missouri court, and the opinion and decision of this Court, there is, we submit, no room for any contention that the Missouri court's latest decision is predicated upon anything other than the local law of that State, or that such decision does not conform to this Court's suggestion—or, "requirement," if it is to be termed such—that (340 U. S., l. c. 5):

"Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law. To that end we vacate the judgment of the Supreme Court of Missouri and remand the cause to that Court for further proceedings not inconsistent with this opinion."

Petitioners' contention that the latest opinion and decision of the Missouri court is not in harmony with the mandate of this Court in these cases, rests upon petitioners' confusion of the language in the two opinions which have been rendered by the Missouri court. On pages 22 and 23 of their brief in support of their petition here,

petitioners have set out excerpts from the latest opinion of the Missouri court, which contain quotations from the earlier opinion of the Missouri court, but, in so doing, petitioners have placed those excerpts in juxtaposition, without indication that other parts of the text have been omitted. The result is misleading and highly confusing, even to petitioners, for they have excluded from their quotations the highly pertinent statement that (R. 86; 240 S. W. 2d, l. c. 108):

> "In other words, there is nothing in the Federal law that compels Missouri to open its courts to cases arising under the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, **but if it does so, the same rights must be accorded to citizens of other states as are given to citizens of this State.**" (Emphasis supplied.)

which is in strict accord with the statement of this Court that (340 U. S., l. c. 3-4):

> "By reason of the Privileges-and-Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art. IV, § 2. Therefore **Missouri cannot allow suits by non-resident Missourians for liability under the Federal Employers' Liability Act arising out of conduct outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State.** But if a State chooses to '(prefer) residents in access to often over-crowded courts' and to deny such access to all non-residents, whether its own citizens or those of other States, it is a choice within its own control. This is true also of actions for personal injuries under the Employers' Liability Act. *Douglas v. New Haven R. Co.*, 279 U. S. 377, 387. Whether a State makes such a choice is, like its acceptance or rejection of the

doctrine of *forum non conveniens*, a question of State law not open to review here." (Bold face emphasis supplied.)

## CONCLUSION.

We submit there is no reasonable basis for any contention that the latest opinion and decision of the Missouri court in these cases is not in harmony with the mandate of this Court. Review of the latest decision of the Missouri court in these cases can serve no purpose except to delay further a trial of the actions out of which these consolidated mandamus proceedings arise—which actions have been pending in the courts without coming to trial for almost three years, and involve injuries sustained almost five years ago in one of the cases, and over three and one-half years ago in the other case.

It is accordingly submitted that petitioners' petitions for writ of certiorari should be denied.

Respectfully submitted,

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SEP 21 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951

No. 286

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner*,

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

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v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

## REPLY BRIEF OF PETITIONERS.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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## REPLY BRIEF OF PETITIONERS.

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The discussion in this reply brief will be confined to the single question whether the Missouri court held that Missouri has a policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases, which is the only question discussed in the brief for respondents in opposition to the petition.

**Brief in Opposition to the Petition Completely Fails to Join Issue on the Pivotal Question Raised in the Petition.**

The pivotal question posed by the petition is whether the writs of mandamus in these cases were quashed by the application of an irrelevant Federal constitutional principle which required Missouri to make its courts available in Federal Employers' Liability Act cases to citizens of Missouri and citizens of other states alike, or whether the Missouri Court held that the writs of mandamus should be quashed because Missouri has a policy rejecting the availability of the doctrine of *forum non conveniens* in such cases.

Counsel for respondents, by their brief in opposition to the petition, do not even venture the effort to meet the pivotal issue in these cases, with the result that the brief in opposition is as irresponsive to the brief in support of the petition as the decision and opinion of the Supreme Court of Missouri in these cases was irrelevant to the issues before that court.

Like the opinion of the Missouri court, the sum and substance of the brief for the respondents consists of an assertion that Missouri has a policy making its courts available in Federal Employers' Liability Act cases to citizens of Missouri and to citizens of other states on a basis of equality. We have never questioned the existence of such a policy in Missouri. It was readily and repeatedly conceded throughout the brief in support of the petition that it has been and is the policy of Missouri to allow citizens of Missouri to bring and maintain suits under Federal Employers' Liability Act in the courts of that State, and that to deny the same privilege to citizens of other states would violate Article IV, Section 2, of the Constitution of the United States, but such a policy which was announced in the *Chambers*[1] and *Grimm*[2] cases, in keeping with the Federal constitutional policy requiring Missouri to make its

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[1] *Chambers* v. *Baltimore & Ohio R. Co.*, 207 U. S. 142.

[2] *State, ex rel. Mutual Pacific Life Ins. Co.* v. *Grimm*, 239 Mo. 135, 143 S. W. 483.

courts available to citizens and noncitizens alike, has no relevancy whatsoever to a policy rejecting the availability of the doctrine of *forum non conveniens* in Federal Employers' Liability Act suits. Like the Missouri court's opinion, the brief for respondents does not touch the issue in these cases, whether the principle of *forum non conveniens* is available in Missouri.

In our point III, discussion of which begins on page 40 of brief in support of petition, we said:

> "The Missouri Court Erroneously Applied Principles of Federal Constitutional Limitations on the Right of States to Decline to Accept Jurisdiction in F.E.L.A. Cases When, in Fact, Missouri Has Already Accepted Jurisdiction of the Parties and Subject Matter in These Cases, With the Result That the Decision of the Missouri Court, Quashing the Writs of Mandamus, Turned Upon Irrelevant Federal Constitutional Principles Governing the Availability of State Courts, and not Upon the Existence of Missouri Policy With Respect to Availability of the Doctrine of Forum Non Conveniens."

The soundness of the conclusion thus summed up in our point III is not even questioned in the brief in opposition to the petition, and it is respectfully submitted that it would have been impossible for counsel for respondents to have submitted a tenable argument against the contention that the Missouri court erroneously decided the academic question of the right of the plaintiffs in these actions to enter the courts of Missouri, rather than the question of the power of the Missouri court to relinquish jurisdiction of the cases under the doctrine of *forum non conveniens*.

We iterate the assertion that the decision of the Missouri court in these cases rested solely upon the irrelevant principle enounced by this Court in the *Chambers* case and by the Missouri court in the *Grimm* case, which concerned the availability of courts, and not the availability of the doctrine of *forum non conveniens*, and that, there-

fore, the mandate of this Court has not been carried out.

It is respectfully submitted that the statement in the conclusion of the brief for respondents that the injuries for which these suits were brought occurred more than three years ago has no proper place in these cases. This Court is concerned with the merits of the legal question of the availability of the doctrine of *forum non conveniens* in Missouri for Federal Employers' Liability Act cases, which was raised immediately after these suits were instituted, and it is not concerned with any delay to the plaintiffs, in obtaining any relief to which they may be ultimately entitled, occasioned by the trial of the preliminary question of the availability of the doctrine of *forum non conveniens*.

**Conclusion.**

It is respectfully submitted that the brief for respondents in opposition to the petition does not touch the issues presented in the petition, and we renew our prayer for the granting of the petition to the end that the important questions presented in these cases be determined.

Respectfully submitted,

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